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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1969

No. 1106

DYMO INDUSTRIES, INC. and MODULUX, INC.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY BRIEF

CARL HOPPE,
2610 Russ Building,
San Francisco, California 94104,
Attorney for Petitioners.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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Petitioners submit that the Brief for the United States in opposition confirms that the issue of probable cause warrants the attention of this Court. The government fails to cite a single authority in which any citizen has been held in contempt for refusing to respond to a government sponsored subpoena requiring that citizen to bring documents to a grand jury where that citizen has insisted upon a showing of good cause as required by the Fourth Amendment.

The government urges expediency, but that is no answer to the Bill of Rights. The government's best case, *Okla-*

homa Press Publishing Co. v. Walling (1946), 327 U. S. 186, cited, page 9, is an anachronism insofar as its dictum, pages 208-209, may relate to the present case. And it has been so recognized by the limited treatment given to it in *See v. City of Seattle* (1967), 387 U. S. 541, at page 545:

> "... Given the analogous investigative functions performed by the administrative subpoena and the demand for entry, we find untenable the proposition that the subpoena, which has been termed a 'constructive' search, *Oklahoma Press Pub. Co. v. Walling*, 327 U. S. 186, 202, is subject to Fourth Amendment limitations which do not apply to actual searches and inspections of commercial premises."

The government's plea to the effect that rejection of the petition is required because the grand jury will expire on April 3, 1970 should not override the clear mandate of the Fourth Amendment. The motto *obsta principiis* stands in the way.

For the reasons stated in their petition, petitioners urge that the writ should be granted.

Respectfully submitted,

CARL HOPPE,

Attorney for Petitioners.